

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

METRO MOTORCARS, INC. d/b/a  
METRO NISSAN MITSUBISHI<sup>1</sup>

Employer

and

Cases 4–RC–21122 and 4–  
RC–21123

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS  
LOCAL 447, AFL-CIO

Petitioner

**REGIONAL DIRECTOR’S DECISION AND ORDER**

The Employer, Metro Nissan Mitsubishi, operates two automobile dealerships at the same location in Philadelphia, Pennsylvania. The Petitioner, Machinists Local 447, filed petitions with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent units of mechanics and parts employees at both of the Employer’s dealerships. The Employer contends that the petitions should be dismissed due to the impending sale of the Employer’s business to another new car dealer. The Petitioner does not dispute that the sale is imminent, but contends that an election should be conducted because the sale has not yet occurred.

A Hearing Officer of the Board held a hearing. Neither party filed a brief. I have considered the evidence and the arguments presented by the parties concerning the appropriateness of an election in view of the pending sale, and as discussed below, I have concluded that the petitions should be dismissed

In this Decision, I will briefly review the relevant facts presented at hearing and the relevant law governing imminent cessation of operations. Then, I will present the facts and reasoning that support my conclusion.

**I. RELEVANT FACTS, LAW, AND ANALYSIS**

<sup>1</sup> The Employer’s name appears as amended at the hearing.

The Employer sells and services new and used Mitsubishi and Nissan vehicles, as well as used vehicles, at its dealerships located on Essington Avenue in Philadelphia. On October 5, 2005, the Employer entered into an Asset Purchase and Real Estate Purchase Agreement (the Agreement) to sell virtually all of the Employer's assets to the Chapman Auto Group. Closing on the Agreement is scheduled for January 31, 2006. The Agreement imposes certain conditions on the parties which must be met before the closing,<sup>2</sup> and the Employer's President, James Boyle, testified without contradiction that all such conditions have been met or will be met very soon, and that there is no impediment to the consummation of the Agreement.

Following the closing, the Employer will no longer operate the Mitsubishi and Nissan dealerships and will no longer employ the employees in the petitioned-for units. The Employer's principals will not be involved with the operations of the dealerships following the closing. Representatives of Chapman Auto Group have spoken with employees of the Employer and indicated their intention to interview them for hire at the same locations following the change in ownership.

The Board will not conduct an election when the employer's cessation of operations is imminent and certain. *Hughes Aircraft Co.*, 308 NLRB 82, 83 (1992); *Martin Marietta Aluminum*, 214 NLRB 646 (1974). Factors considered in determining whether the cessation of operations is sufficiently imminent and certain to warrant dismissal of the petition include the period of time between the representation hearing and the expected date of cessation, steps taken by the employer to cease operations, and whether the employees have been notified. See *Hughes Aircraft Corp.*, supra, 308 NLRB at 82-83; *Davey McKee Corp.*, 308 NLRB 839, 840 (1992); *Larson Plywood Co.*, 223 NLRB 1161 (1976). However, where the likelihood that the Employer's facility will close is too speculative to warrant withholding from the employees their statutory right to choose or reject union representation, the Board will direct an election. *Hazard Express, Inc.*, 324 NLRB 989, 990 (1997); *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976).

In this case, the anticipated cessation of the Employer's operations is more than speculative. A date certain has been set for the transfer of ownership to another entity, and all conditions precedent to that transaction have been fulfilled. The Employer has definite plans to dispose of its assets, and the sale will occur imminently. There is no evidence that the Employer has made any statements or taken any actions inconsistent with those plans. The sale of the Employer's assets is all but a certainty, and once it has occurred, the unit employees will no longer be employed by the Employer, and will have no expectation of future employment by the Employer. Accordingly, the petitions in this matter are dismissed.<sup>3</sup> *Hughes Aircraft Co.*, supra; *Larson Plywood Co.*, supra.

## **II. CONCLUSIONS AND FINDINGS**

<sup>2</sup> Among other things, the Agreement requires various environmental investigations and building inspections, a due diligence investigation, and title insurance.

<sup>3</sup> This Decision and Order is made without prejudice to the Petitioner's right to file a motion to reinstate the instant petition should the Employer fail to complete the sale as planned.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, and the petitions are therefore dismissed.

### III. **ORDER**

**IT IS HEREBY ORDERED** that the petitions filed herein be, and they hereby are, dismissed.

### IV. **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. If a hard copy is also mailed to this address, a request for review may also be submitted by E-mail. <sup>4</sup> For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EST on **February 14, 2006.**

Signed: January 31, 2006

at Philadelphia, PA \_\_\_\_\_

\_\_\_\_\_/s  
/ [Dorothy L. Moore-Duncan]

\_\_\_\_\_  
DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

<sup>4</sup> See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox.

OM 05-30 is available on the Agency's website at [www.nlr.gov](http://www.nlr.gov).